9/22/69

Memorandum 69-108

Subject: New Topic - Pleading and Practice

At the September 1969 meeting the Commission directed the staff to prepare a statement that might be included in the Annual Report to authorize a study to determine whether the California law relating to pleading, practice, and procedure in civil actions should be revised. Attached to this memorandum is the draft statement requested. (See Exhibit I.)

Respectfully submitted,

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Associate Counsel

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EXHIBIT I

A study to determine whether the law respecting procedures in civil actions should be revised

Although certain areas of the law relating to civil procedure have received considerable attention and have been subject to substantial revision in relatively recent years,[1] other areas have not been reviewed and have remained essentially unchanged for almost one hundred years.[2] Some of the revisions, while beneficial in themselves, have raised issues of imperfect coordination;[3] the failure to change has left procedures that appear outmoded and unsatisfactory.[4] The Commission is frequently

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1. For example, completely new provisions relating to depositions and discovery, based largely on the Federal Rules of Civil Procedure, were enacted at the 1957 Regular Session of the California Legislature. Cal. Stats. 1957, Ch. 1904, § 3, p. 3322. See Code Civ. Proc. §§ 2016-2036. Rules governing pretrial procedure were first promulgated by the Judicial Council in 1957; major changes were adopted in 1963, and significant amendments were made in 1967. See California Rules of Court, Rules 206-218.

2. The code pleading system, introduced in California by the Practice Act, had its origin in the New York Code of 1848 (known as the "Field Code"), and has seen relatively little change since its codification in 1872. The existing rules can unfairly trap the unwary or inexperienced. See, e.g., Aronson & Co. v. Pearson, 199 Cal. 295, 249 P. 191 (1926)(denial on the ground that "defendant has no knowledge or information sufficient to form a belief," does not directly deny for lack of belief, is therefore defective and raises to issue); Connecticut Mut. Life Ins. Co. v. Most, 39 Cal. App.2d 634, 640, 103 P.2d 1013 (1940)(negative pregnant--specific denial of one admits all lesser included sums). Yet, at the same time, these rules can be easily circumvented by the skilled, although often requiring pleadings that are both cumbersome and meaningless.

3. For example, the code pleading system is predicated largely on a basic policy that the pleadings should define the issues of the case. However, the tremendous changes in both deposition-discovery practice and pretrial procedure, have greatly reduced the significance of the pleadings in this respect and it would appear that a modernized system of pleading could be better integrated with the procedures governing the later aspects of an action.

4. See note 2 supra.

presented with problems in these areas both in the course of its work on other topics and through communications from judges and attorneys. Many of the problems are minor and scarcely justify separate authorization for study; others raise issues that are too complex and interrelated to be conveniently categorized as a simple, narrow topic. The Commission accordingly requests general authority to study the law respecting procedures in civil actions. If granted this authority, the Commission would undertake study of some of the relatively narrow problems of civil practice, pleading, and procedure as time and resources permit. However, ultimately a comprehensive revision of the entire body of law might be undertaken if that appears desirable and feasible.